

EXHIBIT C

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made this ____ day of _____, 20__, by and between the City of Rialto, a California municipal corporation ("City"), and _____, a _____ ("Purchaser"). City and Purchaser may be individually referred to herein as "Party" or collectively referred to herein as "Parties."

RECITALS

- A. City intends to sell to Purchaser, and Purchaser intends to purchase from City ("Purchase"), certain buildings, improvements and fixtures constructed or located on the real property and all easements and rights benefiting or appurtenant to the real property, which is comprised of approximately 3000 square feet, and improved with a 2400 square foot commercial building, located at 136 S. Riverside Avenue, Rialto, California, Assessor's Parcel Number 0130-241-30 ("Property"), as more specifically described in Exhibit "A", attached hereto and hereby incorporated herein by this reference.
- B. As owner of the Property, City is authorized to sell the Property to Purchaser.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, City and Purchaser agree as follows:

AGREEMENT

1. PROPERTY TO BE PURCHASED.

- 1.1 City is the owner, in fee, of the Property. City agrees to sell and grant to Purchaser fee title to the Property described in Exhibit "A" and convey by a grant deed substantially in the form of Exhibit "B", attached hereto and hereby incorporated herein by this reference.
- 1.2 Purchaser agrees to pay _____ (\$ _____) for the Property, payable as follows:
 - 1.2.1 City shall pay the Bid Security amount of ten percent (10%) of the Purchase Price to the City by certified check or cashiers' check made payable to the City of Rialto within five (5) business days of the Effective Date of this Agreement. The Bid Security shall be credited to the Purchase Price.
 - 1.2.2 The remaining portion of the Purchase Price, in the amount of _____ (\$ _____), shall be due and payable at the Close of Escrow, subject to the conditions set forth in this Agreement.

2. DEFINED TERMS.

- 2.1 ALTA Title Policy.** The term "ALTA Title Policy" shall mean the American Land Title Association ("ALTA") owner's extended coverage policy of title insurance to be issued by the Title Company upon the Close of Escrow pursuant to the terms of this Agreement.
- 2.2 CLTA Title Policy.** The term "CLTA Title Policy" shall mean the California Land Title Association ("CLTA") owner's coverage policy of title insurance to be issued by the Title Company upon the Close of Escrow pursuant to the terms of this Agreement.
- 2.3 Close of Escrow.** The term "Close of Escrow" or "Closing" shall mean the consummation of the purchase of the Property by City and Purchaser and the recordation of the grant deed for the Property, in accordance with the terms and provisions of this Agreement.
- 2.4 Due Diligence/Feasibility Period.** The time period extending sixty (60) days after the Effective Date within which time the Purchaser shall proceed to conduct all its investigations of the Property and within which time the Purchaser may terminate this Agreement for any or no reason without penalty, as set forth herein this Agreement. In the event Purchaser terminates this Agreement during the Due Diligence Period the Bid Security shall be fully refundable to Purchaser within five (5) business days.
- 2.5 Effective Date.** The term "Effective Date" shall mean the last date on which this Agreement is executed by City or Purchaser.

3. CONDITIONS TO CLOSE.

- 3.1 Exchange of Documents.** Within five (5) days of the Effective Date, City will deliver to Purchaser, to the extent not previously delivered by Purchaser, all documents in Purchaser's possession relating to the Property. During the Due Diligence Period or Extended Due Diligence Period, Purchaser shall have the right to review and approve all service contracts, lease agreements, plans, studies, correspondence, and reports relative to the current operation of the Property. City shall provide a copy of any and all of the following, without limitation to the extent in the actual possession of City or reasonably obtainable by City:
- 3.1.1** Environmental indemnification agreements applicable to the Property;
 - 3.1.2** Reports by third-party consultants or governmental entities concerning any soil, environmental, or civil engineering assessments of the Property;
 - 3.1.3** Documents and certifications related to ad valorem property taxes assessed on the Property;
 - 3.1.4** Reports regarding potentially hazardous materials on, or related to, the Property; and
 - 3.1.5** Correspondence, notices of violation, or other documentation from any environmental agency with respect to the Property.
- 3.2 Conditions to Purchaser's Obligation to Purchase Property.** Purchaser's obligation to purchase the Property under this Agreement is subject to the fulfillment, and Purchaser's

approval on or prior to the Closing Date or as otherwise specified herein, of each of the following conditions, each of which is for the benefit of Purchaser and any or all of which may be waived by Purchaser in writing at its option; provided, however, if any of the following conditions have not been fulfilled to Purchaser's satisfaction and approved or waived by Purchaser as provided for herein, the provisions of the section "Conditions to Benefit Purchaser with Respect to Purchase of Property" shall apply:

3.2.1 Conveyance of Property. On the Close of Escrow, City shall convey to Purchaser title to the Property in fee simple by recordation of the grant deed for the Property ("Grant Deed"), with the covenants implied into a grant deed under California Civil Code section 1113. It shall be a condition to Purchaser's obligation to close that City shall clear title of all title defects, liens, encumbrances, deeds of trust, and mortgages, if any, except for non-delinquent real estate taxes for the current fiscal year not yet due and such exceptions to title as Purchaser shall approve as indicated herein, including the section "Issuance of a Preliminary Title Report Acceptable to Purchaser." Possession of the Property and the risk of loss with regard to the Property shall pass to Purchaser at the time of the recordation of the Grant Deed.

3.2.2 Issuance of Title Insurance. Evidence of title to the Property shall be the issuance at the Close of Escrow by Title Company, Attention: _____, at Title Company, INSERT TITLE COMPANY ADDRESS (the "Title Company"), of a CLTA Title Policy (or an ALTA Title Policy, at Purchaser's option) insuring fee simple title to the Property in the condition required by the section "Issuance of a Preliminary Title Report Acceptable to Purchaser" and containing such endorsements as Purchaser shall require, at Purchaser's sole cost and expense. Purchaser shall not be obligated to provide any indemnification of the Title Company to induce it to issue the title policy to Purchaser, or to remove, insure over, or affirmatively cover any otherwise unpermitted exception to title, except with the prior consent of Purchaser after full disclosure to Purchaser of the nature and substance of such exception and indemnity. City will provide the Title Company with a customary and reasonable owner's affidavit permitting the Title Company to provide extended coverage to Purchaser on the Property.

3.2.3 Delivery of Title. Delivery of title to the Property in the condition required herein, and the issuance by the Title Company of, or the irrevocable commitment by the Title Company to issue, the Purchaser's Policy.

3.2.4 Issuance of a Preliminary Title Report Acceptable to Purchaser.

3.2.4.1 Issuance by Title Company within ten (10) days of the Effective Date of a current preliminary title report with respect to the Property, accompanied by legible copies of all documents referred to in the report.

3.2.4.2 Within ten (10) days after Purchaser's receipt of the preliminary title report, Purchaser shall provide written notice to City of any objections

that Purchaser has with respect to the exceptions to title listed in the preliminary title report ("Title Report Notice"). City shall have ten (10) days from the date of the Title Report Notice to cure any exceptions to which Purchaser objects, or agree to cause such exception removed or eliminated prior to or at the Closing, to the reasonable satisfaction of Purchaser, unless a longer period is mutually agreed to in writing by the Parties. If City notifies Purchaser in writing that it elects not to attempt to remove one of Purchaser's objections, or if the Purchaser's objection to any exception to title cannot be removed or eliminated to the reasonable satisfaction of Purchaser, the provisions of the section "Conditions to Benefit Purchaser with Respect to Purchase of Property" shall apply. City's failure to timely respond to any Title Report Notice from Purchaser shall be deemed an election by City to not cure any objection(s) identified therein.

3.2.4.3 Purchaser shall not be required to object to deeds of trust, mortgages, mechanics' liens, judgments or other monetary liens encumbering the Property ("Monetary Liens"), and City shall remove all Monetary Liens prior to the Close of Escrow. In the event of a failure by City to remove a Monetary Lien, the provisions of the section "Termination" shall apply.

3.2.5 Removal of Any Tenant and Tenant's Personal Property. Except as otherwise provided for herein this Agreement or agreed to in writing by the Parties, City shall provide any statutory or contractually required notice to vacate or notice terminating tenancy to any tenant currently in possession of the Property and shall ensure any such tenant has vacated and removed all personal property and debris from the Property prior to the Closing Date. Purchaser shall not be responsible for removing from the Property either (i) any tenant, (ii) City's or any tenant's personal property, or (iii) any debris. Purchaser shall not be responsible for payment of any relocation costs of City or any tenant of the Property.

3.2.6 Validity of City's Representations and Warranties at Close of Escrow. The representations and warranties of City set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and as of such time.

3.2.7 Satisfaction of City's Obligations with Respect to Conveyance of Property. City shall have timely performed all of the obligations required by the terms of this Agreement to be performed by City and all conditions to City's obligations set forth in the section "Conditions to City's Obligation to Sell Property" shall have been satisfied or waived.

3.3 Damage or Condemnation Prior to Closing. City shall promptly notify Purchaser of any knowledge it obtains of casualty to the Property or any condemnation proceeding commenced prior to the Close of Escrow. If any such damage or proceeding relates to, or

may result in, the loss of any material portion of the Property, the Purchaser may, at its option, elect either to:

- 3.3.1** Terminate this Agreement, and neither City nor Purchaser shall have any further rights or obligations hereunder; or
 - 3.3.2** Continue the Agreement in effect, in which event upon the purchase of the Property affected by condemnation, Purchaser shall be entitled to any compensation, awards, or other payments or relief resulting from the casualty or condemnation proceeding.
- 3.4 Proration Prior to Closing.** All items of income and expense relating to the Property, including, without limitation, collected rent and additional rent, real estate taxes, all utilities applicable to the Property, other operating charges or expenses, and any other matters customarily adjusted at Close of Escrow, are to be adjusted and prorated, as applicable, as of midnight of the day immediately preceding the Closing Date.
- 3.5 Conditions to Benefit Purchaser with Respect to Purchase of Property.** The conditions contained in the Section herein entitled "Conditions to Close" are intended solely for the benefit of Purchaser with respect to the Property. If City is unable to deliver title to the Property as required herein, or the conditions described in the section "Conditions to Purchaser's Obligation to Purchase Property" are not satisfied, or if Purchaser does not give its approval or waiver as provided in that section, Purchaser shall have the right, at its sole election, either to proceed with the purchase of the Property and the Close of Escrow in accordance with the terms hereof, or, in the alternative, to terminate this Agreement. In the event Purchaser elects to terminate this Agreement for the reasons and within the timeframes provided herein this Agreement, each Party shall bear its own costs, the Bid Security shall be returned to the Purchaser, and neither Party shall have any further rights or obligations under this Agreement.
- 3.6 Conditions to City's Obligation to Sell Property.** City's obligation to sell the Property under this Agreement is subject to the fulfillment, and City's approval on or prior to the Closing Date, of each of the following conditions, each of which is for the benefit of City and any or all of which may be waived by City in writing at its option:
- 3.6.1 Vacate Property.** City is able to vacate the Property and deliver possession to the Property to Purchaser on the Closing Date;
 - 3.6.2 Validity of Purchaser's Representations and Warranties at Close of Escrow.** The representations and warranties of Purchaser set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and as of such time;
 - 3.6.3 Satisfaction of Purchaser's Obligations.** Purchaser shall have timely performed all of the obligations required by the terms of this Agreement to be performed by Purchaser;

3.6.4 City Council Acceptance of Purchase. Final acceptance and approval of this Agreement by the Rialto City Council.

3.6.5 Delivery of Funds and Documents. Purchaser shall have delivered to Escrow Holder each of the following:

3.6.5.1 Cash or other immediately available funds in the amount of the Purchase Price (including the Deposit) and sufficient to pay all of Purchaser's other costs associated with the Close of Escrow as provided herein.

3.6.5.2 One (1) Preliminary Change of Ownership Report (the "PCOR") for the Property.

3.6.5.3 A closing statement prepared by Escrow Holder and approved in writing by Purchaser.

3.6.5.4 Any other documents, instruments, or records which are reasonably required by Escrow Holder to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

4. ESTABLISHMENT OF ESCROW.

4.1 Time to Open Escrow. Within five (5) business days of the Effective Date of this Agreement, an escrow shall be opened to consummate the purchase of the Property pursuant to this Agreement.

4.2 Escrow Holder. City shall open the escrow by delivering a fully executed counterpart of this Agreement to _____ Title Company, at _____, to the attention of _____ (the "Escrow Holder"). In addition, City and Purchaser agree to execute, deliver, and be bound by any reasonable or customary supplemental escrow instructions of Escrow Holder, or other instruments as may reasonably be required by Escrow Holder, in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not amend or supersede any portion of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control.

5. CLOSING.

5.1 Closing Date. The Close of Escrow hereunder shall be held and delivery of all items to be delivered at the Closing under the terms of this Agreement shall be performed at the offices of the Title Company in the county wherein the Property is located, or other mutually-agreed upon location, on or before [DATE], or such earlier or later date as the City and Purchaser may mutually agree upon in writing (the "Closing Date").

5.1.1 If the Close of Escrow is either caused to be extended or requested to be extended by the Escrow Holder, the Close of Escrow will be extended for a mutually agreed upon time up to an additional thirty (30) days, and neither the Party shall be

deemed to have requested the extension nor shall either be liable for any additional payment.

5.2 Grant Deeds. Prior to Close of Escrow, City shall deposit the executed Grant Deed into escrow.

5.3 Other Documents. As required and applicable, City shall prepare or cause to be prepared the following documents:

5.3.1 Two (2) originals of a Natural Hazard Disclosure Statement for the Property;

5.3.2 One (1) City's Affidavit of Nonforeign Status (the "FIRPTA Affidavit"), for the Property;

5.3.3 One (1) Real Estate Withholding Certificate (the "Form 593-C"), for the Property;

5.3.4 One (1) Preliminary Change of Ownership Report (the "PCOR"), for the Property; and

5.3.5 Such other documents as are reasonably necessary for issuance of the required CLTA or ALTA Title Policy.

5.4 Encumbrances. City shall pay current accrued but unpaid assessments and bonds due on the Property through the Closing Date, if applicable. City shall pay in full any liens, claims, or mortgages encumbering the Property, if applicable.

5.5 Purchaser's Fees and Costs. Purchaser shall be responsible for paying Purchaser's fees and costs associated with the Purchase as is customary of a buyer in Los Angeles County, including:

5.5.1 Its own fees for recording the Grant Deed on the Property;

5.5.2 The cost above the cost of the CLTA Title Policy, if Purchaser so chooses, of an ALTA Title Policy, with or without a survey, and preliminary title report on the Property;

5.5.3 All documentary transfer taxes payable in connection with the recordation of the Grant Deed on the Property;

5.5.4 Any endorsements to the title insurance policy on the Property requested by Purchaser;

5.5.5 One-half of the Escrow Holder's fees and other customary charges for document drafting, recording, and miscellaneous charges; and

5.5.6 Its legal costs and consultants' fees associated with consummating the Purchase.

5.6 City's Fees and Costs. City shall be responsible for paying City's fees and costs associated with the Purchase as is customary of an owner/seller in Los Angeles County, including, but not limited to:

5.6.1 The cost of a CLTA Title Policy and preliminary title report for the Property;

5.6.2 One-half of the Escrow Holder's fees and other customary charges for document drafting, recording, and miscellaneous charges; and

5.6.3 City's legal costs, broker's fees, and consultants' fees associated with consummating the Purchase.

5.7 Failure to Close. If, as a result of no fault of City or Purchaser, escrow fails to close, the Parties shall split equally the Escrow Holder's Cancellation fees and charges. In the event escrow fails to close through the fault of City, City shall pay any and all cancellation costs incurred as well other expenses in connection therewith and Purchaser shall bear no expense with respect to the same. In the event this escrow fails to close through the fault of Purchaser, Purchaser shall pay any and all cancellation costs incurred as well as other costs and expenses in connection therewith and City shall bear no expense with respect to the same.

5.8 Delivery of Property. City shall maintain the Property until the Close of Escrow as it would in the ordinary course and shall perform all normal repairs and maintenance to be performed from the Effective Date to the Closing Date in order to maintain the Property in the condition in which it is as of the Effective Date, except for reasonable wear and tear. Prior to Close of Escrow, City shall remove any personal property from the Property. On Close of Escrow, City shall deliver the Property to Purchaser in substantially the same condition except for reasonable wear and tear and the removal of City's personal property.

6. REPRESENTATIONS AND WARRANTIES.

6.1 Limited City Warranties

6.1.1 "As-Is Sale". EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED BY PURCHASER THAT THE PROPERTY IS CONVEYED TO PURCHASER IN ITS "AS-IS" CONDITION AND "WITH ALL FAULTS," AND CITY MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF TITLE OF THE PROPERTY, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY, THE ZONING OR OTHER LAND USE PROVISIONS OR RESTRICTIONS AFFECTING THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR USE BY PURCHASER, ANY MATTERS WHICH WOULD BE DISCLOSED BY AN INSPECTION OF THE PROPERTY, OR ANY OTHER MATTERS AFFECTING OR CONCERNING THE PROPERTY (WHETHER OR NOT OF PUBLIC RECORD).

6.1.2 Limited Warranties. Purchaser hereby affirms and acknowledges that neither City nor any of its officers, agents, employees, advisors and/or attorneys (collectively the "City Exculpated Parties") have made nor has Purchaser relied upon any representation, warranty, or promise whether oral or written, express or implied, by operation of law or otherwise, with respect to the Property or any other subject matter of this Agreement except as otherwise expressly set forth in this Agreement. Without limitation, Purchaser acknowledges that, except as specifically set forth to the contrary in this Agreement, no warranties or representations, expressed or implied, of any kind whatsoever have been made by any of the City Exculpated Parties, or will be relied upon, and Purchaser hereby releases the City Exculpated Parties from any claims with respect to the suitability of use of the Property for Purchaser purposes, general plan designation, zoning, value, use, tax status, or physical condition of the Property, or any part thereof, or matters affecting or concerning the Property, including, without limitation, the flood elevations, drainage patterns, soil and subsoil composition and compaction level, and other conditions at the Property, or with respect to the existence or non-existence of hazardous substances (as defined in the section "Hazardous Substances") in, on, under, or around the Property, or with respect to the accuracy of any title report or commitment, soils report or any other plans or reports relating to the Property or its use or development, or neighborhood or area uses or factors affecting or concerning use or development of the Property, or other matters otherwise in any way relating to the Property or the transactions contemplated hereby. Purchaser is acquiring the Property based solely on its own independent investigation and inspection of the Property and its suitability for Purchaser purposes, and in no way in reliance on any information provided by City or any of the other City Exculpated Parties other than the representations and warranties expressly contained herein. This release includes claims of which Purchaser is presently unaware or which Purchaser does not presently suspect to exist which, if known by Purchaser, would materially affect Purchaser's release to City.

This Section entitled "Limited Warranties" does not release City from any obligation hereunder, the breach of this Agreement, or losses resulting from the reckless or intentional misconduct of the City.

INITIALS: City _____ Purchaser _____

6.2 City Representations and Warranties. In consideration of Purchaser entering into this Agreement and as an inducement to Purchaser to purchase the Property from City, City makes the following representations and warranties, each of which is material and is being relied upon by Purchaser (the continued truth and accuracy of which shall constitute a condition precedent to Purchaser's obligations hereunder):

6.2.1 City Authority to Execute Agreement. The execution, delivery, and performance of this Agreement by the persons designated below have been specifically authorized by City. City, through those authorized persons, has the legal right, power, and authority to enter into this Agreement, to consummate the transactions contemplated hereby, and to convey the Property to Purchaser.

6.2.2 Property Representations and Warranties. City warrants and represents to Purchaser with respect to the Property the following:

6.2.2.1 No Pending Litigation. City does not have actual knowledge of litigation pending pertaining to the Property.

6.2.2.2 Hazardous Substances. City is unaware of:

6.2.2.2.1 Any Hazardous Substances, discharges, leaks, releases, or spills on, in or under the Property, except for the following:

6.2.2.2.2 Use or storage of Hazardous Substances on the Property, except the following: _____.

6.2.2.2.3 Investigations, assessments, evaluations, sampling, testing, or monitoring of Hazardous Substances on the Property or adjacent parcels, except for the following: _____.

6.2.2.3 Contracts Concerning the Property. City does not have actual knowledge of any contracts, licenses, commitments, or undertakings respecting the Property or the performance of services on the Property, or the use of the Property or any part of it by which the Purchaser would become obligated or liable to any person, except for the following: _____.

6.2.2.4 Violations. City has not received written notice of any violation of any statute, ordinance, regulation, or administrative or judicial order or holding, whether or not appearing in public records, with respect to the Property or any improvements on the Property.

6.2.2.5 Status of Title. City has not leased or otherwise transferred all or any portion of the Property, nor to its knowledge does any third party have any right to acquire or occupy all or any portion of the Property, including, without limitation any prior owner of the Property.

6.2.2.6 Condemnation. There are no pending or, to City's knowledge without any duty of investigation, threatened proceedings in eminent domain or otherwise, which would affect the Property or any portion thereof.

6.2.2.7 No Notices. City has not received written notice of any change contemplated in any applicable laws, ordinances, or restrictions, or written notice of any judicial or administrative action, or written notice of any action by adjacent landowners, or written notice of natural or artificial conditions upon the Property that would prevent, impede, limit, or render more costly the Purchaser's contemplated use of the Property to the extent such contemplated use is actually known to City.

6.2.2.8 Inaccuracies. If any representation or warranty of the City in this section "City Representations and Warranties" becomes inaccurate after the Effective Date other than as a result of a prior misrepresentation by the City or as a result of the affirmative act of the City, the City shall promptly notify the Purchaser of the inaccuracy. The City whose representation or warranty became inaccurate for reasons other than due to a prior misrepresentation or affirmative act of the City, shall not be in breach or default of this Agreement as a result of such inaccuracy, but shall take commercially reasonable efforts, diligently and in good faith, to correct such inaccuracy. If the inaccuracy cannot be corrected to the reasonable satisfaction of the Purchaser within ten (10) days after the Purchaser learns of the inaccuracy, the Purchaser may terminate this Agreement and the Parties shall have no further obligation to each other, other than those which expressly survive termination of this Agreement.

6.3 Purchaser's Representations and Warranties. In consideration of City entering into this Agreement and as an inducement to City to sell the Property to Purchaser, Purchaser makes the following representations and warranties (the continued truth and accuracy of which shall constitute a condition precedent to City's obligations hereunder):

6.3.1 Authorized Delivery. Purchaser hereby represents and warrants to the City that as of the date of this Agreement and as of the Closing, this Agreement and all documents executed by Purchaser which are to be delivered to City at the Closing are or at the time of Closing will be duly authorized, executed, and delivered by Purchaser, and are or at the Closing will be legal, valid, and binding obligations of Purchaser, and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which Purchaser is a party or to which it is subject.

6.3.2 Purchaser Authority to Execute Agreement. Purchaser is a _____ duly formed under the laws of the State of California and this Agreement and the execution and delivery thereof by the persons designated below have been specifically authorized by Purchaser. Purchaser has the legal right, power, and authority to enter into this Agreement, to consummate the transactions contemplated hereby, and to acquire and accept the Property from City.

6.4 Authority of Executing Officers. Each individual executing this Agreement on behalf of the Parties is duly authorized to execute and deliver this Agreement on behalf of their respective Party.

6.5 Hazardous Substances.

6.5.1 City warrants with respect to the Property, that it has no actual knowledge that there are hazardous substances (as defined below) in existence on or below the surface of the Property, including without limitation, contamination of the soil, subsoil or groundwater, which constitutes a violation of any law, rule, or

regulation of any governmental entity having jurisdiction thereof, or which exposes the Purchaser to liability to third parties. City represents to Purchaser that it has not used the Property, or any portion thereof, for the production, disposal, or storage of any hazardous substances, and it has no actual knowledge that there has been such prior use with respect to the Property, or any portion thereof; or that there has been any proceeding or inquiry by any governmental authority with respect to the presence of such hazardous substances on the Property or any portion thereof. Without limiting the other provisions of this Agreement, City agrees that it will cooperate with the Purchaser's investigation of matters relating to the foregoing provisions of this paragraph, and provide access to, and copies of, any data and/or documents relating to potentially hazardous substances used at the Property and any disposal practices followed to the extent that such documents are in the possession of the City.

6.5.2 For purposes of this Agreement, the term "hazardous substances" means:

- 6.5.2.1** Any substance, product, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environment Response, Compensation and Liability Act (CERCLA), 42 United States Code section 9601 et seq.; the Hazardous Material Transportation Conservation and Recovery Act, 42 United States Code section 1801 et seq.; the Resources Conservation and Recovery Act, 42 United States Code section 6901 et seq.; the Clean Water Act, 33 United States Code section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code section 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code section 25249.5 et seq.; California Health and Safety Code section 25280 et seq. (Underground Storage or Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code section 25170.1 et seq.; California Health and Safety Code section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code section 13000 et seq., all as amended (the above-cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Laws") or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous or toxic substance hereafter in effect;
- 6.5.2.2** Any substance, product, waste, or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on

negligence, trespass, intentional tort, nuisance, or strict liability or under any reported decisions of a state or federal court;

6.5.2.3 Petroleum or crude oil other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and

6.5.2.4 Asbestos.

6.5.3 The representations, warranties, and covenants contained in this section will survive the Close of Escrow.

7. BROKER COMMISSION/AGENCY.

7.1 With respect to the transaction related to this Agreement City has been represented by _____ ("City Broker"), and Purchaser has been represented by _____ ("Purchaser Broker") (collectively "Brokers"). City agrees to and will be responsible for payment of any Brokers' real estate commission, real estate finder's fee, real estate acquisition fee, or other real estate brokerage-type compensation ("Real Estate Compensation") owed thereto. Brokers' Real Estate Compensation for the Purchase of the Property shall be no more than three percent (3%) of the Purchase Price divided between the Brokers as follows:

7.2 Except for City Broker and Purchaser Broker, each Party warrants that no other broker has participated in this transaction and that neither Party has been represented by any other broker in connection with the purchase and sale of the Property. Each Party hereby agrees to indemnify, defend, and hold harmless the other from any and all loss, cost, liability, or expense (including but not limited to attorneys' fees and returned commissions) resulting from any claims for Real Estate Compensation by any broker, agent, person, or entity based upon the acts contemplated by this Agreement.

7.3 For the duration of this Agreement and so long as this Agreement is effective, neither City nor Purchaser's Broker shall negotiate or commit to sell, lease, or otherwise transfer the Property or any portion thereof to any other party.

8. MUTUAL INDEMNIFICATION. City and Purchaser shall indemnify the other Party and hold it harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages and losses, including, without limitation, reasonable attorneys' fees, resulting from any breach of warranty or breach of covenant made, or in any document, certificate, or exhibit given or delivered to the other pursuant to or in connection with this Agreement. The indemnification provisions of this section "Mutual Indemnification" shall survive the delivery of the Grant Deeds and transfer of title or, if title is not transferred pursuant to this Agreement, any termination of this Agreement.

9. TERMINATION. This Agreement may be terminated by either City or Purchaser without further liability in the event of a breach by the other of any term, condition, or covenant contained herein.

10. SPECIFIC PERFORMANCE. Neither City nor Purchaser waives the right of specific performance if permitted by law. City and Purchaser expressly recognize that specific performance shall be available to enforce performance of this Agreement.

11. RIGHT TO ENTER PROPERTY.

11.1 From the Effective Date until the end of the Due Diligence Period or Extended Due Diligence Period (the "Inspection Period"), the Purchaser shall have the right, at its own expense and pursuant to the provisions of this section, to select a licensed contractor and/or other qualified professional(s), to conduct inspections, tests, surveys, or other studies, including, but not limited to, environmental studies or assessments (the "Inspections") of the Property, and to conduct other due diligence and feasibility investigations regarding the ownership, use and development of the Property, as deemed necessary. In addition, Purchaser and its representatives shall have the right of access to the Property throughout the Inspection Period, for the purpose, at its own expense, of obtaining data and making surveys, tests, inspections, and other studies deemed necessary, and in order to prepare any architectural and reconstruction plans necessary with regard to the Property as required by local and California state regulatory agencies.

11.2 Upon at least twenty-four (24) hours prior notice, Purchaser may enter on the Property for the purposes permitted herein, subject to the following:

11.2.1 All such inspections shall be conducted in a manner so as not to interfere with Purchaser's use of the Property;

11.2.2 City shall have the right to have a representative present;

11.2.3 Reasonable precautions shall be exercised to avoid damage and protect persons or property;

11.2.4 City assumes no liability for loss or damage to property or injuries to or deaths of agents, contractors, or employees of Purchaser by reason of the Purchaser's exercise of privileges given in this section;

11.2.5 Purchaser agrees to indemnify and hold harmless City from any damage caused by its activities authorized in this section. Purchaser shall indemnify City for any damage or destruction to the roads or fences, or other property, occurring by reason of the exercise of rights granted herein, or to replace or restore said property to its preexisting condition; and

11.2.6 All due diligence activities shall be in accordance with applicable laws.

11.3 At least three (3) days prior to the completion of the Due Diligence Period or Extended Due Diligence Period, Purchaser shall deliver to City a disapproval notice stating that its inspection has disclosed a defect in the Property or revealed other matters which in Purchaser's sole and absolute discretion make acquiring the Property unacceptable (the "Disapproval Notice"), which Disapproval Notice shall describe the defect or matter (a "Defect") in reasonable particularity. If the Disapproval Notice asserts a Defect, City may,

at its election and at its sole cost and expense, take such action as may be necessary to correct such Defect within ten (10) days after its receipt of the Disapproval Notice. In the event the City elects to correct the Defect, the Close of Escrow may be extended for a time period sufficient to cure the Defect. The election of the City to correct or not to correct any Defect shall be evidenced by City's written notice to Purchaser delivered within ten (10) days after City's receipt of the Disapproval Notice. If Seller elects not to cure the Defect, then Purchaser shall have the election of: (i) terminating this Agreement without liability on the part of the Purchaser; or (ii) waiving the defect and accepting the property without any liability on the part of the City (except that the City shall remain liable for its covenants, representations, and warranties as otherwise provided in this Agreement). This election shall be made within fifteen (15) days after receipt by Purchaser of City's written notice electing not to cure the Defect.

- 11.4** Purchaser shall limit its activities on the Property to those due diligence investigations described herein and shall take reasonable efforts to minimize interruption to any tenant of the Property.

- 12.** **UNAVOIDABLE DELAYS.** Whenever performance is required of either Party under this Agreement, that Party agrees to use all reasonable diligence to perform in good faith; provided, however, if completion of performance is delayed at any time by reason of acts of God, war, civil commotion, riots, acts of terrorism, strikes, picketing, or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, governmental requirements, or causes beyond the reasonable control of a Party (other than financial inability), then the time for performance shall be extended by the time of the delay actually caused and the Close of Escrow shall be appropriately extended in order to accommodate such delay. The provisions of this Section do not operate to excuse the City or Purchaser from the timely payment of any monies required to be paid under this Agreement.

13. GENERAL PROVISIONS.

- 13.1 Time of Essence.** Time is of the essence of each provision of this Agreement in which time is an element.

- 13.2 Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

CITY
City of Rialto
150 S. Palm Avenue
Rialto, CA 92376

PURCHASER

ATTN:
Facsimile:
Telephone:

ATTN: _____
Facsimile: _____
Telephone: _____

With a copy to:
Eric S. Vail, Esq.
Burke, Williams & Sorensen LLP
1770 Iowa Avenue, Suite 240
Riverside, CA 92507-2479
Facsimile: (951) 788-5785
Telephone: (951) 788-0100

With a copy to:

ATTN: _____
Facsimile: _____
Telephone: _____

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 13.3 Confidentiality.** The Parties hereby acknowledge and agree that all terms and conditions of the transaction contemplated by this Agreement and the contents of any negotiations therefor shall be kept confidential to the extent permissible by applicable law, subject to disclosure thereof, without limitation, by court order or pursuant to the California Public Records Act, Government Code section 6250 et seq.
- 13.4 Entire Agreement of City and Purchaser.** This Agreement and the attached exhibits constitute the entire agreement between the City and Purchaser and supersede all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by City and Purchaser.
- 13.5 California Law.** This Agreement shall be governed by and the rights, duties, and obligations of the City and Purchaser shall be determined and enforced in accordance with the laws of the State of California, with the exception of definitions to be construed under the Federal laws cited in the section "Hazardous Substances."
- 13.6 Attorneys' Fees.** If either the City or Purchaser files any action or brings any proceedings against the other Party arising out of this Agreement, or is made a party to any action or proceeding brought by the Title Company, then, as between City and Purchaser, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "Prevailing Party" shall be the entity that is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether the prevailing party is entitled to its costs or attorneys' fees.
- 13.7 Waiver.** No waiver of any provision of this Agreement shall be considered a waiver of any other provision or of any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by the City or Purchaser of

any remedy provided in this Agreement or at law shall not prevent the exercise by that entity of any other remedy provided in this Agreement or at law or in equity.

- 13.8 Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the City and Purchaser hereto and their respective heirs, legal representatives, successors, and assigns.
- 13.9 Assignment.** Neither the City nor Purchaser may assign, transfer or convey its rights or obligations under this Agreement without the prior written consent of the other Party to this Agreement which consent shall not be unreasonably withheld, and then only if assignee assumes in writing all of the prior Party's obligations hereunder; provided, however, neither the City nor Purchaser shall be released from its obligations hereunder by reason of such assignment.
- 13.10 Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one (1) document.
- 13.11 Captions.** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties.
- 13.12 Disputes.** A dispute which cannot be resolved by the Parties' representatives shall be submitted to non-binding mediation. The mediator's fees shall be divided equally between the Parties. If a dispute is unresolved after mediation, any actions or proceedings arising under, growing out of, or in any way related to this Agreement shall be instituted and prosecuted only in courts located in the County of Los Angeles, State of California, and each Party expressly waives its right, under part II, title IV of the California Code of Civil Procedure, to cause any such actions or proceedings to be instituted or prosecuted elsewhere.
- 13.13 Time.** All periods of time referred to in this Agreement shall include all Saturdays, Sundays, and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday, or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, or state or national holiday.
- 13.14 Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions hereof unenforceable, invalid, or illegal.
- 13.15 Survival of Warranties, Covenants, and Obligations.** The warranties, covenants, and obligations of City and Purchaser under the provisions of this Agreement to the extent the same have not been fully performed, and excepting those covenants and obligations which have been extinguished by the expiration of a specified period of time, shall survive the Close of the Escrow through which the purchase of the Property is consummated.
- 13.16 Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20____

Dated: _____, 20____

City of Rialto

Purchaser

By: _____ By: _____

Print Name: _____ Print Name: _____

Print Title: _____ Print Title: _____

Attachments:

Exhibit "A": Legal Description of Property

Exhibit "B": Grant Deed / Certificate of Acceptance